IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7106 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHRAMJIVI MAJADUR MANDAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7106 of 1989

Mr. Anshin H.Desai for MR ND NANAVATI for Petitioner No. 1

Mr.N.D.Gohil, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 17/09/2004

ORAL JUDGEMENT

1. In this petition, the petitioner-Uion has made a grievance that despite clear directions by the Industrial

Tribunal in its award dated 25th September, 1986 passed in Reference I.T. no.225 of 1984, the respondents have not given benefits available to the members of the Union. It is the case of the petitioner that during the pendency of this petition, the members of the Union are suffering on account of certain benefits not being given to them, though legally entitled, and unfortunately, several people have already expired during the pendency of this petition and the earlier proceedings before the Industrial Tribunal. The petitioner has, therefore, requested this Court to bring an early end to their dispute, and has requested for full implementation of the award of the Industrial Tribunal dated 25th September, 1986.

2. The facts, which are not in dispute, are that the present petitioner had raised an industrial dispute before the Industrial Tribunal by filing Reference I.T.no.225 of 1984 seeking benefits for the workman flowing from Government Circulars dated 4th July, 1973 and 16th November, 1973. It is not in dispute that the Reference came to be allowed in favour of the petitioner by order dated 25th September, 1986 wherein the Tribunal was pleased to direct that the Government should grant the benefits to the concerned workman being brought on the work-charge establishment with effect from 3rd August, 1981 i.e. from the date of filing of the Reference subject to fulfillment of the conditions provided in Government Circulars dated 4th July, 1973 and 16th November, 1973. In the said award, the Tribunal was pleased to observe that the complaint of the petitioner is that the said Circulars dated 4th July, 1973 and 16th November, 1973 are not being implemented, and it was further found that direction should be granted for implementation of the said Circulars within a period of three months. It is also not in dispute that the said award came to be challenged by the respondents before this Court by filing Special Civil Application no.2195 of 1987 and that said petition was dismissed by the High Court.

3. Having stated the undisputed facts, the point of divergence can be noted. It is the case of the petitioner that despite the said directions of the Industrial Tribunal, and despite this Court rejecting the petition filed by the respondents challenging the award, the respondents have not fulfilled the directions of the Industrial Tribunal and have not granted the benefits flowing from the said Circulars dated 4th July, 1973 and 16th November, 1973. It is also the case of the petitioner that this Court also by an interim order dated

11th April, 1990 directed the respondents to implement the award passed by the Industrial Tribunal. It is the case of the petitioner that despite these directions, the award of the Industrial Tribunal remains uncomplied with. In the petition as well as in the affidavit-in-rejoinder filed by the petitioner, the petitioner has reiterated that large number of workmen were entitled to be brought on work-charge establishment and are required to be granted consequential benefits and to a large extent, the award of the Industrial Tribunal is ignored by the respondents. The respondents have filed two affidavits and have stated in general terms that the directions of the Industrial Tribunal have been complied with, and certain persons have been brought on work-charge establishment. It is stated that six labourers were appointed on work-charge establishment vide order dated 15th December, 1986.

4. Along with the affidavit-in-rejoinder, the petitioner has produced a detailed chart showing details of 45 workmen with respect to the date of appointment on muster roll, the date on which they have completed five years continuous service, and the payscale which they are receiving from the respondents, and such other relevant details. On the basis of this chart, the learned Advocate for the petitioner pointed out that these 45 workmen were entitled to the benefits of being brought to the work-charge establishment pursuant to the directions of the Industrial Tribunal from a particular date, and though these workmen fulfilled all the conditions of the Circulars dated 4th July, 1973 and 16th November, 1973, they have not yet been granted the benefits from the date they became entitled to the same. Upon perusal of the Circular dated 4th July, 1973, it can be seen that the same provides for giving priority to the daily rated workers for being brought on the work-charge establishment on new posts being available or where existing posts fall vacant. The said circular further provides for certain conditions to be fulfilled before which the said benefits can be granted to the concerned workmen. The conditions include that the daily wager with maximum period of work should be given the priority. It also requires that for being eligible to be absorbed on the workcharge establishment, a minimum of five years service as a daily wager is a must. The requirement of being sponsored through Employment Exchange is, however, directed to be waived. These and other relevant conditions are to be fulfilled before a workman can seek to be brought on the work- charge establishment pursuant to the Circular dated 4th July, 1973. By subsequent Circular dated 16th November, 1973, it has been provided

that for considering five years of service as required in the Circular dated 4-7-1973, it is provided that a workman having not less than 180 days of service in a calendar year will be deemed to have completed one year,however, for considering five years of service, he shall be required to have completed on an average not less than 240 days of service.

5. The petitioner contends that all 45 persons mentioned in the chart at page 101 produced alongwith the rejoinder fulfilled these conditions and should have been granted the benefits flowing from the said Circulars on the due date as directed by the Industrial Tribunal. The respondents have filed two affidavits, one of them after filing of the rejoinder by the petitioner though the averments have not been dealt with specifically. As noted above, the grant of benefits of being brought to the work- charge establishment depend upon fulfillment of certain conditions. For want of sufficient data, it is impossible for this Court, at least at this stage, to ascertain as to how many of these persons fulfil the conditions of the said two circulars. Unfortunately, the respondents have also not supplied data in this regard. It is not clear whether each individual case was considered for grant of the benefits or not. It cannot be gainsaid that if the workers fulfil the conditions mentioned in the said circulars they would be entitled to receive the benefits since the Industrial Tribunal has already given such a direction way back in 1986. and the petition filed challenging such an award has also been rejected by this Court.

6. Under the circumstances, I find it appropriate to dispose of the petition by requiring the petitioner to give full details of all the 45 workers who are members of the petitioner-Union in respect of whom the petitioner is demanding the benefits of the award of the Industrial Tribunal, and directing the respondents to consider such cases individually. The petitioner shall supply to the respondents full details of the working of these workers, the date when they completed five years of service and all other relevant material within a period of four weeks from today. Upon receipt of such data, the respondents shall individually consider each case for grant of the benefits flowing from the Circulars dated 4th July, 1993 and 16th November, 1993 as directed by the Industrial Tribunal in its award dated 25th September, 1986. Upon consideration of their cases, the respondents shall forthwith grant such benefits to all workers who are found to be fulfilling the conditions. This exercise shall be completed within a period of three months after

the receipt of the details from the petitioner. The respondents shall also communicate to the petitioner brief reasons to the extent those workers are not found eligible to receive above benefits pursuant to the above exercise conducted by the respondents. If found necessary it will be open for the respondents to permit the representative of the Union to be heard in person. Needless to say, if aggrieved, it will be open for the petitioner to challenge such a decision before the appropriate Court in accordance with law. With these directions, the petition is disposed of. Rule is discharged. No orders as to costs. Direct service is permitted.

(Akil Kureshi,J.)

stanley-ak.